

# Highly Erodible Land Conservation

Public Law 99-198

Food Security Act, Dec. 23, 1985

# 3 Elements to have for an **HEL** **Determination**

- Production of an **Ag Commodity** – any crop planted and produced by annual tilling of the soil, including tilling by one-trip planters
- HEL Soil Map Unit List of Jan. 1, 1990  
(Erodibility Index  $\geq 8$  = **HEL** ) EI=RKLS/T
- **USDA Program** Applicant – see NFSAM 510.02(b)

# AD-1026 is Received

- Date Stamp
- Create Registry for Prioritization of Service
  1. FSA Farm Credit Borrowers, Inventory Properties & Request from Prog. Agency for Certification
  2. Yes to Planting Commodity Question (#9)\*
  3. FSA-Farm Credit requests
  4. All other USDA program participants
- Check files for EXISTING HEL determination

# NRCS-CPA-026

- Determinations made by FIELD
- Use HEL Soils List from Jan. 1, 1990  
(1=HEL, 2=PHEL, 3=NHEL)
- If PHEL a field review is needed  
to correct LS value (if repeatedly HEL or  
NHEL change original classification)
- HEL soil  $\geq 33.33\%$  of acreage or  $\geq 50$  Ac  
=HEL

## CPA-26 Cont.

- Label the FSA photocopy field as HEL or NHEL
- Notify all signatories on the AD-1026 within 10 days by using NEW TEMPLATE LETTER (this is a preliminary technical determination\*)
- After the 30 day appeal period give FSA: copy of CPA-026 and labeled aerial photocopy

## CPA-026 cont.

- Keep case file with: AD-1026 and AD-1026A, NRCS-CPA-026, FSA aerial photocopy with HEL/NHEL designations, HEL calculations (EI) including FLD. documentation of PHEL soil map units, Resource Inventory data, original signed copy of conservation plan, compliance review status, any other material used for making the determination.

## CPA-026 continuation

- Timeframe for completion of determination  
**Office** determination – 15 working days  
from receipt of AD-1026  
**Field** determination – 60 working days

Note: \* Determinations stays with the Land  
don't change with owner  
\* We don't change field numbers or  
boundaries

# COMPLIANCE

- **Conservation System** – set of practices/treatments to bring a **substantial reduction** in erosion (75% not to exceed 2T for the Predominant HEL soil) or **permit no substantial increase** in erosion (T level for sudbusting = converting from native vegetation)



# Compliance cont.

- If participant elects to use a conservation system not in FOTG then is the person's responsibility to demonstrate the system meets FOTG criteria.
- Note: Systems up to 2T approved by DC  
Up to 4T approved by STC  
Over 4T approved by NHQ

# Compliance cont.

- **Conservation Plan** – document that describes the application of an approved cons. system. It is approved by the CD.  
Requires: Map showing HEL & W fields  
Schedule of application  
Practice narrative  
O&M requirements  
The farmer & NRCS sign, CD approves

# Compliance cont.

- **Cons. System & Plans Revisions**

Done per farmer's request

Due to substantial farm changes

NOT DONE during Status Review

but if different than one in Cons. Plan & is basis for “UA” (Using Approved system)

**MUST** be documented in Plan.

# Variances

- **Minor technical violation:** little effect on erosion control, a practice not applied as per FOTG, O&M problems – \*use with great infrequency, DC grants
- **Special conditions:** weather, disease, pests; usually more than one county. **Producer requests** & documentation needed, NRCS has 30 days to respond  
Don't place Tract on following year's compliance review list
- **Personal hardship:** severe physical condition, death, NRCS error. DC obtains documentation & requests variance to STC.
- **Undue Economic Hardship:** system too expensive to install, form AD-1026D needed, FSA approves variance  
Place Tracts on following year's compliance review list

# RUSLE 2 use

- Calculate erosion for compliance reviews
- To evaluate systems not applied as plan says
- Where a conservation plan was not developed
- Develop new conservation systems
- For system revisions  
*(for new C.S. & revisions use site specific factor values)*

# Wetland

- An area is a wetland if it has **HYDRIC SOIL**, **HYDROPHYTIC VEGETATION** and **INDICATORS OF WETLAND HYDROLOGY**

# Wetland Compliance

- FSA 1985- Planting Ag Comm. on wetland converted after Dec. 23, 1985 – ineligible for some USDA prog. (some exemptions)
- Amendments of 1985 – conversion after Nov. 28, 1990 for the purpose of, or to have the effect of making the production of Ag Comm. possible – ineligible for USDA benefits for that crop yr. until wetland is restored (some exemptions)
- 1996 amendments – allows for mitigation on other sites

# When to do a **W** Determination

- NRCS will **only** make **W** determinations on land for participants, or persons intending to become participants, in USDA programs when the proposed activity involves draining, dredging, leveling, or otherwise **manipulating** the land, for the purpose of, or to have the effect of making possible the production of an Ag Commodity. Also if we receive whistleblower complaint. **Will be made on a Field basis without “NI” labels.**



## W cont.

- **Manipulation** = alteration of hydrology, filling, and/or removal of woody vegetation
- **Making Production Possible** = sites with woody veg. removed: stems, brush, trees & stumps. Allows production of an Ag Comm. where such production was not possible before, making the area farmable more yrs. than previously possible or reduces crop stress and allows increased crop yields.

## W cont.

- **For the Purpose of** = actions completed or in progress that show an intent to make production possible. Examples: partial removal of stems & stumps from forested wetlands, partially draining herbaceous wetlands or placing fill in a wetland.

## W cont.

- **Off-Site Procedures** – based on W mapping conventions approved by the MOA (EPA, FWS, COE & NRCS). See NFSA Section 527.4, pg 179)
- **On-Site Determinations** – when off-site tools are not adequate, during appeals, prior to withholding benefits when a determ. of eligibility is needed, USDA participant request, pre-conversion minimal effect exemption. *On-site visit before farmer conducting maintenance of drainage systems is not required anymore.*

# Wetland Labels – NFSA,P.514

- Wetlands (**W**) – meets wetland criteria. May be used for Ag Comm. production under natural conditions
- Farmed Wetland (**FW**) – manipulated to produce Ag Comm. before 12/23/85. Still meets specific hydrology criteria (2 weeks of inundation)
- Farmed Wetland Pasture (**FWP**) – manipulated & used for pasture or hay prior to 12/23/85. Still meets hydric soils and wetland hydrology criteria (may be domestic vegetation).

## W labels cont.

- Converted Wetland after 11/28/90 (**CW+Yr**) – not converted before 12/23/85, conversion discovered after 11/28/90 or USDA doesn't have records that clearly demonstrate conversion date (prior to 11/28/90). Ineligible until W is restored or mitigated.

# Wetlands with Exemptions

- Prior Converted (**PC**) – converted prior to 12/23/85, Ag Comm. produced at least once prior to 12/23/85. Maintenance is okay.
- Artificial and Irrigation-Induced Wetlands (**AW**) – not subject to WC provisions FSA 1985
- Converted Wetland Technical Error (**CWTE**) – conversion based on incorrect determination documented on CPA-026
- Third Party Conversion (**TP**) – converted after 12/23/85 by actions of persons other than the program applicant

# Wetlands with Exemptions cont.

- Non-Wetland (**NW**) – Land under natural conditions doesn't meet W criteria, or W converted and criteria was not present before 12/23/85 but never cropped.
- Wetlands Manipulated but Production not made Possible (**WX**) – manipulated after 12/23/85 but not physically possible to produce an Ag Comm.
- Good Faith Exemptions (**GFW**) – if violation was without intent, then eligibility is not lost – but must restore. Up to one year to restore.
- See NFSA Part 515.21(a) for a summary of labels & uses/maintenance allowed

## Wetland cont.

- **Abandonment** – *Applies ONLY to FW & FWP.* Cessation of management for 5 consecutive years. If the person provides hydrologic & vegetative baseline conditions prior to allowing the site to revert to wetland conditions, the site won't be subject to abandonment.



# Staff will do On-Site W Determ.

- Alex Dado – northwest, following T.C. boundaries
- William Robert Knight – southwest, following T.C. boundaries
- Yuri Plowden and Chris Fabian – northeast, following NE team boundaries
- John Chibirka – southeast, following SE team boundaries

# NFSAM

- MyNRCS
- Management Tab
- eDirectives Box (top right)
- Manuals
- Title 180
- Parts 510-520 (Parts 513-517 not in)  
For Wetland Determinations carefully use  
NFSAM hard copy

# Compliance Review Form

**FSA Compliance Reviews - Edit a Tract - Microsoft Internet Explorer**

File Edit View Favorites Tools Help

Back Forward Stop Home Search Favorites RSS Print Mail Word Excel PowerPoint Outlook

Address <http://ias.sc.egov.usda.gov/auth/csr/AddEditTract.aspx?tractreviewid=178339> Go Links

**Address** RD **Fax**  
**City, State, Zip** BIGLERVILLE, PA **Email**  
17307-9793

**Part C (Optional) - Locate Plan Data** Clear Plan Find Plan

**Plan ID** ☐ Verified Plan  
**Plan Name**

**Part D - Tract Validity**

**Valid Tract?** ☐ Valid Tract ☐ Not a Valid Tract ☐ Tract Not Found

**Part E - Tract Wetlands Review**

**Wetlands Evaluation:** Not Evaluated

**Are there any wetlands present or is there any indication that wetlands might be present, such as hydric soils, hydrophytic vegetation, or wetland hydrology?** ☐ Yes ☐ No

**Part F - Tract HEL Compliance Review**

**HEL Compliance Determination:**  
--Select a Compliance Determination--

**Is there ephemeral gully erosion present?** ☐ Yes ☐ No

**Part G - Review Summary**

**Review type:** --Select Review Type-- **Crop Year:** --Select Crop Year-- **Review part of Quality Assurance Plan?** ☐ Yes ☐ No

**Total acres evaluated of Tract:**  **Time Spent (hr.)**

**Comments:**

**Does this tract have a Title XII Conservation Program Contract or Easement on it? (CRP, CSP, EQIP, FRPP, GRP, WHIP, WRP)** ☐ Yes ☐ No

**Last Modified by** Wendall R Oaks **Last Modified date** 02/22/2007

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